

Discussion Paper

**Plain-Language Consumer
Contracts:**

***A benefit for consumers
and business alike***

Honourable Dennis Anderson
Alberta Consumer and
Corporate Affairs

January 1991



Plain-Language Consumer Contracts: A benefit for consumers and business alike

Many problems occur because consumers don't read the contracts they sign, or if they do read them, they don't always understand them. They are intimidated by small print, poor organization, and legal language. Most consumers can't understand contracts because legal language and traditional contract format stand in their way. By working together to create contracts in plain language, business and government can return the contract to its original function—an agreement that both parties understand.

What is a contract?

A contract is a legally-recognized agreement. The law assumes that there is a meeting of minds between two parties. But that is often not the case with business-to-consumer transactions. Most businesses use standard-term contracts. The terms are not usually negotiable. Consumers must accept the business's terms—terms that are often barely legible and often incomprehensible. The consumer is not meant to read and understand, just to "sign here"

Why should this be so? Why shouldn't consumers know what they are agreeing to? How can consumers live up to their side of the bargain if they are not certain what their side of the bargain is?

Plain language in consumer contracts can significantly improve business-consumer relations.

What is plain language?

Plain language is not a new concept. Plato advocated plainness 2400 years ago; books on English grammar and style advocated it over 400 years ago and indeed continue to advocate it today. But the move to have consumer contracts written in plain language is relatively new. It began in 1975 when Citibank, a major American bank, re-wrote its consumer loan contract in plain language.

Citibank proved that a contract does not need to be in legal language to be legally binding. Good standard English presented clearly on the page is all that is required. To be plain, documents must be in readily understandable language and form. For the most part, this means simply following the principles of good writing and good design. But always keep your reader in mind. What is plain depends on what the intended reader finds easy to read and understand.

The following guidelines will help you keep the needs of the reader in mind:

Use words with common meanings

Choose words that your reader will understand. Avoid jargon and words that add legal flavour, such as 'hereby,' 'herewith,' and 'aforesaid.'

Arrange the material in a logical order

Documents should follow the order that the reader expects and finds natural. This applies to sentences, paragraphs, and whole documents.

Divide the documents into manageable chunks

Keep sentences short. Divide the material into paragraphs with headings, if appropriate.

Lay out the document clearly

The document should look easy to read. Use white space to show organization. Use informative headings so your reader can find things easily.

Choose lettering that is easily legible

Consider your reader's eyesight. The size and style of lettering should be easy to read. There should be good contrast between the colour of the lettering and the colour of the paper.

Why change now?

The marketplace has been changing rapidly in recent years. Consumers are inundated with new goods and services. Buying decisions are becoming increasingly complex. Traditionally, consumer-protection legislation has focused on getting information to the consumer by requiring information to be disclosed. But disclosure is not enough. The information must be in a usable, understandable form.

Research from a variety of disciplines now shows us how to improve the way we communicate in print. Type size, line length, sentence structure, white space, organization, word choice—all these affect whether the consumer will read and understand a document.

How will plain language benefit consumers?

Many problems occur between ethical businesses and consumers because of poor communication. Businesses rely on contracts to communicate rights and obligations to consumers. However, since consumers often do not read or cannot understand contracts they sign, they rely on employees of the business to tell them what they need to know.

If contracts are in plain language, most consumers who make reasonable efforts will be able to understand them. Onerous provisions will not be hidden in small print because there won't be small print. Contract terms will be clearly laid out so that consumers will know them before signing the contract. If terms are not agreeable to consumers, they can decide to take them, leave them, or try to change them. Whatever they decide, they will know the contract terms—this in itself creates a healthier marketplace. Experience such as Citibank's has shown that consumers who understand their rights and responsibilities are much more likely to live up to them.

How will plain language benefit business?

Although there is an initial cost to revising forms and contracts, plain language actually saves time and money. It brings greater efficiency to business. Some of the benefits include:

- staff training time is reduced because new staff can easily understand the documents they must work with;
- staff are better able to answer questions from consumers;
- the business has to deal with fewer complaints because consumers understand the terms of the contract;
- consumers are more trusting of the business because terms are not hidden; therefore the business earns goodwill and consumer loyalty;
- the legal effectiveness of contracts is improved because internal contradictions hidden in complicated documents are revealed by the rewriting process and eliminated.

Some examples:

Citibank discovered that in order to collect payment on consumer loans, it was the third largest suer of consumers in New York City. This was one reason why it started rewriting its documents. Within a few years of introducing its loan form in plain language it considerably reduced its number of legal actions against consumers. Citibank also claims to have increased its market share because consumers liked being able to understand what they were signing.¹

NRMA Insurance Ltd. of Australia released a plain English policy in 1976. It discovered that

- it took less time to train staff if documents were understood easily;
- staff provided customers with better and clearer information;
- junior staff did not have to ask senior staff for so many explanations about policy; and
- customers filed fewer invalid claims because they understood better what was covered in their policies.²

Five major Canadian banks, representing 90% of the bank branches in the country, have developed or are developing some documents in plain language. They see plain-language forms as a marketing tool to attract customers and report improved customer relations after revised forms have been introduced. Also, staff have been better able to understand the matters dealt with in the forms. Although actual cost savings are difficult to determine, they perceive that administrative costs have been reduced.³

What will it cost to revise contracts?

Any revising of forms will cost money, but with plain-language documents spending a little saves a lot. Plain-language documents are efficient. Business, and society as a whole, will save time and money. The following examples illustrate this point:

- The American Federal Communications Commission required five full-time staff members to answer the public's questions about its regulations for citizen band radios. After it rewrote the regulations in plain language, all inquiries stopped, and the five staff members were assigned to other duties.⁴

- The Law Reform Commission of Victoria, Australia, rewrote its traditional summons form to eliminate wasteful paperwork and ineffective procedures. The Commission has estimated that this would save \$600,000 (Aust) a year in staff time alone—26 members of staff, including 16 police officers, could be redeployed to offer more useful services to the public.⁵
- The British Department of Defense rewrote its travel expense claim form in plain language. The error rate was cut by 50%, the time needed to fill it out by 10%, the time needed to process it by 15%. Preparing the form cost \$23,000 (Cdn), but it saves \$778,000 per year.⁶
- The British Department of Health and Social Security introduced plain language application forms for legal aid in 1984. It cost \$50,000 (Cdn) to develop and test the form. It saves \$2,900,000 in staff time every year.⁷
- The British Civil Service reports to have saved £15 million since 1982 by simplifying the language on its forms.⁸

Is legislation necessary?

Some argue that we may need to legislate plain language because businesses otherwise will continue to rely on legalese in their contracts. Lawyers spend years studying legal language and become comfortable with it. Some of them argue that as long as contracts are understandable to other lawyers and judges, there is no need to change. They may forget that for consumers it is a strange dialect, and consumers are the ones who have to sign, often without legal advice. Although the benefits and legal effectiveness of plain language have been well documented over the past fifteen years, the legal profession, which relies heavily on tradition, has been slow to change.

A Joint Committee of the Canadian Bar Association and Canadian Bankers' Association has recognized shortcomings in legal and business writing, particularly in the financial services industry. The joint committee report called *The Decline and Fall of Gobbledygook: Report on Plain Language Documentation* will soon be considered by the two Associations.

Some businesses and agencies are using plain language to communicate with consumers. They are quick to see the benefits and are trying to improve their documents.

While some lawyers and bankers seem to support the plain language movement, there is concern that the process will falter unless there is

some incentive to change. Plain-language legislation could act as a catalyst for change.

The Alberta Government has passed the Financial Consumers Act which requires that contracts relating to the purchase of many financial products be in plain language. Is further legislation required? The answer to that question depends on how quickly we as Albertans can voluntarily change.

What form could legislation take?

Prompted by the success of Citibank's plain-language consumer loan form, New York State was the first to legislate plain language. Nine American states now require plain language in consumer contracts. Requirements for plainness range from New York's general 'clear and coherent' provision to strict 'objective standards' that dictate such things as sentence length, print size, and readability scores. Alberta's Financial Consumers Act, which is the first legislation in the Commonwealth to require plain language, follows the 'subjective' New York standard.

Although New York's standard has been criticized for being vague, it has proved to be more effective in achieving clarity in contracts than the objective standards. Objective standards make it easy for the business to know that it has complied with the law, but contracts end up being written to pass objective tests rather than to communicate clearly with consumers. Objective standards also inhibit flexibility, because they set narrow criteria for writing and design.

If further plain-language legislation is required, it would likely continue with the subjective approach adopted for the Financial Consumers Act. Contracts would have to be in readily understandable language and form. Each business would decide what to do to make its contracts plain. The legislation would include a 'good faith' provision to protect the business from frivolous legal action. If the business could prove that it has made an honest effort to be plain, it would have a complete defense. The purpose of plain-language legislation is not to force businesses into a narrow standard of plainness, but to encourage them to improve the way they communicate with consumers.

Where can you go to find out more?

Alberta Consumer and Consumer Affairs is committed to reducing problems created by contracts and forms that consumers can't understand. As a first step we will establish an inventory of plain-

language projects being undertaken throughout the province and act as a clearinghouse for those who wish to share their experiences. If you are involved in any plain-language projects or have an interest in learning about plain-language projects that may affect you or your business we would like to hear from you.

What do you think?

Alberta Consumer and Corporate Affairs encourages public comment on the plain-language issue. We are interested in learning of any problems consumers, including consumers of government services, have experienced as a result of entering into contracts or completing forms that are confusing.

Finally, and perhaps most importantly, we would appreciate the views of both consumers and business about the necessity of legislating plain language. Comments and information regarding plain-language projects should be submitted to:

The Minister of Consumer and Corporate Affairs
The Honourable Dennis Anderson
Box 1616
Edmonton, Alberta
T5J 2N9

Please label your envelope "Plain Language."

Endnotes

1. "The Citibank Simplified Promissory Note", *How Plain English Works for Business: Twelve Case Studies*, (Washington: U.S. Department of Commerce, Office of Consumer Affairs, 1984) 3-10.
2. Robert D. Eagleson, *Writing in Plain English* (Canberra: Australian Government Publishing Service)6.
3. Canadian Bar Association and Canadian Bankers' Association Joint Committee on Plain Language, *The Decline and Fall of Gobbledygook: A Report on Plain Language Documentation* (Ottawa: Canadian Bar Association, 1990) 26-27.
4. Law Reform Commission of Victoria, *Legislation, Legal Rights and Plain English: Discussion Paper No. 1* (Melbourne: Law Reform Commission of Victoria, 1986) 14.
5. *Legislation, Legal Rights and Plain English*, 14.
6. Gail Dykstra, *Plain Language and the Law: CLIC's Background Documents* (Toronto: Canadian Law Information Council, 1986) 19.
7. *Plain Language and the Law*, 19.
8. "Britain This Week", *The Economist*, July 17, 1990, 55.



Recycled Paper